

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 93 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT  
and  
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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SURYAKANT M PAREKH

Versus

BHAGWATIPRASAD H JANI  
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Appearance:

MR DHARMESH V SHAH for Petitioner  
NOTICE SERVED for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE J.N.BHATT  
and  
MR.JUSTICE K.M.MEHTA

Date of decision: 17/08/2000

ORAL JUDGEMENT (Per J.N. Bhatt, J)

In this appeal under Section 110-D of the Motor

Vehicles Act, 1939 (hereinafter referred to as 'the old Act') the appellant original claimant has challenged the quantum awarded for personal injuries to him in M.A.C.P. No. 293 of 1979 by the Motor Accident Claims Tribunal (Main), Mehsana, under which he came to be awarded an amount of Rs. 1,32,000/- with running interest at the rate of 6% per annum from the date of application till the date of realisation against the claim of Rs. 2 lakhs.

2. After having taken into account the facts and circumstances emerging from the record in general and the medical evidence in particular, age, avocation of the claimant, nature and number of injuries, period and length of treatment in three different hospitals including two at Mumbai, expenditure, physical impairment sustained by the claimant, we are of the opinion that the amount claimed, originally, in the petition, is quite reasonable and the Tribunal, in restricting the amount to Rs. 1,32,000/-, has committed serious error.

3. The following aspects have remained uncontrovertible from the record of the present case:

- (i) that the original claimant sustained fractures and serious injuries on account of collision of the S.T. Bus, in which he was travelling as a passenger, with a stationary truck on 17.6.1979 at about 10.30 p.m. on Ahmedabad-Mehsana Highway near Kalol. As a result of which, the original claimant-appellant before us was shifted to the Kalol Hospital for treatment. The claimant was admitted as an indoor patient in the Kalol Hospital initially for a spell of three months and seven days during which two operations came to be performed and skin grafting was done on the left leg and his left leg was kept under traction.
- (ii) serious injuries were caused on left leg and lower mussels as well as left hand on account of dashing of the sheet of the vehicle after collision.
- (iii) the claimant had sustained several fractures as a result of which a plate was fixed at the fractured side on the left leg.
- (iv) since the claimant was required better and further treatment, he was taken to Harikishandas Hospital, Mumbai, on 25.9.1979 and was admitted in the hospital on 26.9.1979 where he was kept as indoor patient upto 4.3.1980.

(v) the fingers of the left hand stiffened and therefore operation was performed in the hospital at Mumbai.

(vi) The skin grafting was also done on the left leg and the bone grafting was done at the fractured side.

(vii) during the course of treatment, there was pus formation due to which bone was required to be removed by operation and replacement of bone was done.

(viii) he was relieved from the hospital and returned to Radhanpur. Again, on 16.5.1980, he went to Harikishan hospital at Mumbai and bone grafting was done at the fractured side and was kept as indoor patient there till 14.6.1980. He was relieved with plaster bandage.

(ix) on 21.9.1980, he again went to the same hospital and operation was performed at the left hand finger joint and bone grafting was done on the leg and was kept in the same hospital till 10.10.1980. He returned to Radhanpur and again got admitted to the same hospital at Mumbai further treatment for three days.

(x) He was also examined by Dr. Dinubhai and Nandkishor Parikh. Orthopaedic Dr. Parikh's evidence is placed on record.

(xi) According to the evidence of Dr. Parikh the original claimant has sustained permanent partial disablement in left leg and left hand. Dr. Parikh has stated that the left lower limb i.e. left leg is shortened by 2 cms. There are operative scars and other scars on the left leg and there is Y-shaped scar on left leg adherent to tibia bone and it is of the size of 31 cms, 19 cms and because of that left leg is in disfigured condition with some sensory impairment. There is also wasting of the left calf by 2 cms. and left thigh is thickened by 3 cms. The left foot is shortened by 2 cms. and is fixed at 100% planter flexed position with impaired sensation on foot and skin grafted area.

(xii) the left knee is about 20 inch flexed position. Flexation of left leg is 40 degree only.

(xiii) upon X-ray examination it was noticed that the left tibia is not united and there was stiffness of the M.P. and T.P. joints of left foot and ankle.

(xiv) the fractures of left femur was also mal-united with 30 antero lateral angulation as per the evidence of Dr. Parikh.

4. Dr. Parikh has, clearly, testified before the Tribunal that the permanent partial disablement in the left leg is to the extent of 26%. It is also very clear from the evidence of Dr. Parikh that permanent partial disablement in the left hand is to the extent of 25%.

5. The claimant was working at the relevant time as commission agent at Mumbai. The claimant had expended an amount of Rs. 48,000/- towards medical care, treatment and operations.

6. It appears that after having considered dispassionately the aforesaid aspects emerging from the record of the present case, in our opinion the amount awarded by the Tribunal to the claimant restricting to the extent of Rs. 1,32,000/- against the original claim of Rs. 2,00,000/- is, undoubtedly, grossly, inadequate and therefore, it would be, absolutely, necessary to put the impugned award in the right side. Since the claim is restricted to the extent of Rs. 2,00,000/- in our opinion the amount of Rs. 2 lakh is quite just and reasonable and the Tribunal in not granting the full amount as claimed by the original claimant, has committed a serious error.

7. Apart from the heavy expenditure incurred by the claimant for medical treatment in different hospitals including two hospitals at Mumbai, considering tremendous amount of strain and strain, pain, shock, agony and disformity which the claimant would have suffered during the spell of long treatment including several operations for fractures, the Tribunal should have awarded reasonable amount under the head of pain, shock and sufferings.

8. Again apart from that, the physical disformity and impairment is bound to affect not only the earning capacity to an extent but also the normal avocations of life. It is very clear from the record that there is permanent partial disablement in the left hand to the extent of 25% and in the left leg to the extent of 26%. In our opinion, this aspect is not, with due respect to

the Tribunal, seriously, taken into consideration while awarding the amount of compensation under the head of future economic loss. Again the rate of interest awarded by the Tribunal is 6%. In our opinion, considering the young age of the claimant as he was 38 years at the relevant time when the unfortunate road mishap occurred, number of injuries, serious nature of injuries, prolonged period of treatment, skin grafting, operations, restricted movement on account of injuries, the extent of permanent partial disablement and huge amount expended for the medical treatment, the amount claimed by the appellant-original claimant in the petition before the Tribunal could not be said to be in any way excessive. In our opinion, the view taken by the Tribunal is not only conservative one but is on a very lower side. Therefore, the enhancement of the compensation as claimed in the appeal and as originally demanded in the claim petition deserves to be accepted with the result the appeal needs to be allowed and the full amount is required to be awarded.

The appeal is, therefore, allowed with costs. The resultant effect would be that the impugned award shall stand modified and the claim petition shall stand allowed as prayed for. The claimant, therefore, shall be entitled to full amount of Rs. 2 lakhs as claimed, originally, in the petition. Since the matter is of 1979, the rate of interest on the enhanced amount shall be at the rate of 15% per annum from the date of appeal till the date of payment. Respondent No. 2 Gujarat State Road Transport Corporation shall deposit the amount awarded under the order of this court and the short fall, if any, of amount due and payable under the award recorded by the Tribunal within a period of two months from today. If the amount is deposited within a period of two months from today, the rate of interest for the benefit of the Corporation will be reduced to 12% only.

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